

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:21-cv-00164-MR**

THOMAS HUGHES,

Plaintiff,

vs.

FNU PROPST,

Defendant.

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ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Default Judgment [Doc. 23], Plaintiff's "Motion for Contempt of Law" [Doc. 24], and Defendant's Motion for Extension of Time to File Answer or Other Responsive Pleading [Doc. 26].

Pro se Plaintiff Thomas Hughes ("Plaintiff") is a North Carolina state inmate currently incarcerated at Alexander Correctional Institution in Taylorsville, North Carolina. He filed this action on June 21, 2021, pursuant to 42 U.S.C. § 1983, naming FNU Propst, identified as Correctional Officer at Foothills Correctional Institution, as the sole Defendant. [Doc. 1]. Plaintiff has since amended his Complaint twice. [Docs. 4-1, 11, 12]. Plaintiff's Second Amended Complaint survived initial review in accordance with the Court's Order. [Doc. 13]. The Court ordered that the Clerk commence the

procedure for waiver of service as set forth in Local Civil Rule 4.3 for Defendant Propst. [Id. at 4]. On October 14, 2021, Defendant Propst waived service, making his answer is due December 13, 2021. [Doc. 19].

Now before the Court is Plaintiff's Motion for Default Judgment, which is postmarked December 10, 2021; docketed December 13, 2021; and, oddly, dated by Plaintiff December 14, 2021. [Docs. 23 at 4, 23-1]. Plaintiff incorrectly argues that Defendant Propst waived service on September 14, 2021 and that Propst's answer was due 60 days from that date or by November 15, 2021.¹ [Id. at 3]. Plaintiff asks the Court to enter default judgment against Defendant Propst for his alleged refusal "to answer within the time frame of 60 days." [Id.]. Plaintiff also moves for "contempt of law" for essentially the same reason. [Doc. 24]. Contrary to Plaintiff's claims, Defendant Propst timely moved for an extension of time to answer or otherwise respond to Plaintiff's Second Amended Complaint. [Doc. 26].

For good cause shown, the Court will grant Defendant Propst's motion for more time, making his answer due by January 12, 2022. The Court will deny Plaintiff's motions. The deadline for Defendant Propst to answer Plaintiff's Complaint was December 13, 2021 and Defendant Propst timely moved for an extension of time to do so. Moreover, default judgment cannot

¹ November 13, 2021 is a Saturday.

be granted without a proper entry of default in the first place. See Fed. R. Civ. P. 55(a), (b). Finally, there are no grounds for holding Defendant Propst in contempt.

Plaintiff is instructed to review the Federal Rules of Civil Procedure, the Local Rules of this Court, and the Order of Instructions [Doc. 3] in this matter so that he may avoid filing premature and improper motions in the future.

ORDER


IT IS THEREFORE ORDERED that Plaintiff's Motion for Default Judgment [Doc. 23] and Motion for Contempt of Law [Doc. 24] are **DENIED**.

IT IS FURTHER ORDERED that Defendant's motion for extension of time [Doc. 26] is **GRANTED** and Defendant's answer is due by January 12, 2022.

The Clerk is respectfully instructed to mail Plaintiff a copy of the docket in this matter.

IT IS SO ORDERED.

Signed: December 17, 2021



Martin Reidinger
Chief United States District Judge

